



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** November 27, 2013

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary *Ben Brancel*  
Sandy Chalmers, Trade & Consumer Protection Administrator *Sandy Chalmers*

**SUBJECT:** **ATCP 136- Mobile air conditioners; reclaiming or recycling refrigerant (emergency rule)**

This is to inform you that the department will be adopting the attached emergency rule related to Mobile Air Conditioners; reclaiming or recycling refrigerant. This emergency rule will take effect on January 1, 2013 and will remain in effect until May 30, 2013, unless extended.

**Related Statutes and Rules**

The Mobile Air Conditioners; Reclaiming or Recycling Refrigerant program is governed under Chapter 100.45 of the Wisconsin Statutes.

Chapter ATCP 136, Wis. Admin. Code, interprets and implements Chapter 100.45, Stats., as it relates to operators of and technicians for mobile air conditioners. DATCP has explicit authority to implement administrative rules for this program.

**Background**

The existing ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also requires businesses that install, repair or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule requires businesses to register their mobile air service technicians and technicians to successfully complete a department approved training course or satisfy other training requirements.

Prior to 2011, Wisconsin was the only state where the sale of the small cans of substitute, non-ozone depleting refrigerant was prohibited. In 2011, the Legislature modified s. 100.45, Stats., to allow the sale of these products. One result of the law change was that the Wisconsin specific training became redundant with the EPA required training. Mobile air conditioner repair businesses also report they have lost business to do it yourselves who can now purchase supplies to make the repairs themselves.

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### **Rule Content**

This emergency rule does all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements.

DATCP proposes to eliminate the \$120 annual registration fee and streamline the training requirements currently required under this rule. These modifications will harmonize DATCP's rule with federal law and reduce overall regulatory burdens. The proposed rule also removes references to obsolete DSPS licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45(5m), Stats., and are not affected by this rule change.

### ***Fiscal Impact***

This emergency rule eliminates the \$120 annual registration fee paid by operators of mobile air conditioner repair businesses. With approximately 3,500 businesses registering annually, the total impact on the department's budget would be \$420,000 each year. The statutorily required \$160 surcharge fee paid by those businesses who fail to register on time will continue to be collected. The surcharge results in approximately \$7000 of revenue each year.

### ***Business Impact***

This emergency rule eliminates the \$120 annual registration fee paid by operators of mobile air conditioner repair businesses. With approximately 3,500 businesses registering annually, the overall savings for businesses would be \$420,000 annually. In addition, the 11,000 technicians who register annually with the department would be able to use their EPA approved training course to meet Wisconsin's training requirements. This cost savings is indeterminate, but would save technicians and businesses both training registration fees and time away from their jobs.

### ***Federal and Surrounding State Programs***

#### **Federal Programs**

At the federal level, the Environmental Protection Agency (EPA) requires technicians to be trained and certified by an EPA approved organization. The training must cover specific content areas, and technicians must pass a test demonstrating competency to be certified. Under the existing rule, the EPA approved course does not automatically meet the DATCP training standards. Therefore, a technician seeking certification in Wisconsin who has already successfully completed the EPA approved course must also (in most circumstances) complete a DATCP approved course. Under this emergency rule, a technician who completes the EPA approved course would meet the DATCP training requirements.

This emergency rule is consistent with federal laws related to buying, selling, reclaiming, and recycling ozone depleting refrigerants.

**Surrounding State Programs**

The EPA administers the mobile air conditioner regulations used in adjacent states. Wisconsin has adopted EPA's regulations into state law to improve the ability to enforce the regulations. The existing ATCP 136 exceeds the EPA training requirements. This emergency rule brings Wisconsin's training requirements into conformity with the EPA training regulations used in neighboring states.

Questions and comments (including hearing comments) related to this emergency rule may be directed to:

Jennifer Heaton-Amrhein  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-5164  
E-Mail: [Jennifer.heatonamrhein@wisconsin.gov](mailto:Jennifer.heatonamrhein@wisconsin.gov)

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE

1 The Wisconsin department of agriculture, trade and consumer protection adopts the following  
2 emergency rule *to repeal* ATCP 136.02 (4) (d), ATCP 136.10 (2) (c), ATCP 136.10 (3) (a) 2.,  
3 and ATCP 136.10 (3) (b) 4., *to amend* ATCP 136.02 (4) (g) (Note), ATCP 136.02 (5), ATCP  
4 136.02 (7), ATCP 136.02 (8) (a), ATCP 136.08 (1), ATCP 136.08 (7) (Note), ATCP 136.12 (1)  
5 (b) (Note), and ATCP 136.12 (2) (Note); *relating to* mobile air conditioners, reclaiming or  
6 recycling refrigerant.

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**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

This rule makes changes to an existing rule, ATCP 136, Mobile Air Conditioners; Recycling and Reclaiming of Refrigerants, administered by the department of Agriculture, Trade and Consumer Protection ("DATCP"). The existing rule contains environmental protections related to allowable refrigerants and their handling and disposal and registration and training requirements for business operators and technicians. This rule will eliminate the \$120 annual registration fee for operators of mobile air conditioning businesses, harmonize training requirements with EPA to eliminate duplication, and remove outdated references to statutes that no longer exist.

***Statutes Interpreted***

Statutes Interpreted: s. 100.45, Wis. Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07 (1), 100.20 (2), 100.45 (5) (a)), Wis. Stats.

### *Explanation of Statutory Authority*

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.

DATCP has broad authority under s. 100.20(2), Stats., to write general orders to forbid methods of competition in business or trade practices in business which are determined by the department to be unfair or to prescribe methods of competition in business or trade practices in business which are determined by the department to be fair.

DATCP has specific authority under s. 100.45 (5)(a), Stats., to promulgate rules establishing standards for recycled refrigerant based on recognized national industry standards and qualifications for individuals and businesses that service mobile air conditioners.

### *Related Statutes and Rules*

This emergency rule modifies an existing rule chapter. Chapter ATCP 136 which regulates the repair or service of motor vehicle air conditioners and trailer refrigeration equipment. This rule relates to s. 100.45, Stats., Mobile Air Conditioners.

### *Plain Language Analysis*

#### **Background**

The existing ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also requires businesses that install, repair or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule requires businesses to register their mobile air service technicians and technicians to successfully complete a department approved training course or satisfy other training requirements.

Prior to 2011, Wisconsin was the only state where the sale of the small cans of substitute, non-ozone depleting refrigerant was prohibited. In 2011, the Legislature modified s. 100.45, Stats., to allow the sale of these products. One result of the law change was that the Wisconsin-specific training became redundant with the EPA required training. Mobile air conditioner repair businesses also report they have lost business to do it yourselfers who can now purchase supplies to make the repairs themselves.

#### **Rule Content**

This emergency rule does all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements.

This emergency rule eliminates the \$120 annual registration fee and streamline the training requirements currently required under the rule. These modifications will harmonize DATCP's rule with federal law and reduce overall regulatory burdens. This rule also removes references to obsolete DSPS licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45(5m), Stats., and are not affected by this rule change.

***Summary of, and comparison with, existing or proposed federal statutes and regulations.***

At the federal level, the Environmental Protection Agency (EPA) requires technicians to be trained and certified by an EPA approved organization. The training must cover specific content areas, and technicians must pass a test demonstrating competency to be certified. Under the existing rule, the EPA approved course does not automatically meet the DATCP training standards. Therefore, a technician seeking certification in Wisconsin who has already successfully completed the EPA approved course must also (in most circumstances) complete a DATCP- approved course. Under the proposed rule, a technician who completes the EPA- approved course would meet the DATCP training requirements.

This emergency rule is consistent with federal laws related to buying, selling, reclaiming, and recycling ozone-depleting refrigerants.

***Comparison with rules in adjacent states***

The EPA administers the mobile air conditioner regulations used in adjacent states. Wisconsin has adopted EPA's regulations into state law to improve the ability to enforce the regulations. The existing ATCP 136 exceeds the EPA training requirements. The proposed rule brings Wisconsin's training requirements into conformity with the EPA training regulations used in neighboring states.

***Summary of Factual Data and Analytical Methodologies***

This emergency rule does not depend on a complex analysis of data. The 2011 Legislative change to the statute prompted the change to this rule. This rule harmonizes Wisconsin's training requirements with federal law and improves consistency with surrounding states. The department has determined it has adequate revenues to administer the program with the fee reduction.

***Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis***

The DATCP Weights and Measures Bureau administers Wisconsin's mobile air conditioning registration program. In 2013, 3500 operators of mobile air conditioning repair businesses registered with DATCP. At a cost of \$120 per registration, the cumulative cost for these businesses to register with the state was \$420,000. In addition, the DATCP collected another \$7000 in statutorily required surcharge fees on late registrations. These businesses also registered

and submitted Wisconsin required training credentials for 11,000 mobile air conditioning repair technicians.

### *Effect on Small Business*

This emergency rule eliminates registration fees and modifies training requirements. Businesses will benefit from the reduction in fee and training expenses. The rule would save approximately 3,500 businesses a \$120 annual registration fee for a total savings of about \$420,000 each year. In addition, the 11,000 technicians who register annually with the department would be able to use their EPA approved training course to meet Wisconsin's training requirements. This cost savings is indeterminate, but would save technicians and businesses both training registration fees and time away from their jobs. This rule will not have a negative effect on small business.

### *Environmental Impact*

This emergency rule does not have an environmental impact.

### *DATCP Contact*

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P.O. Box 8911  
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### *Place Where Comments are to be Submitted and Deadline for Submission*

Questions and comments related to this rule may be directed to:

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### **FINDING OF EMERGENCY**

- 1           **(1)** In Wisconsin, businesses that repair mobile air conditioners must register with the
- 2   department and pay an annual registration fee of \$120 for each registered location. In addition,

1 each technician working on mobile air conditioners at these businesses must attend a DATCP-  
2 approved training course and pass an exam.

3 (2) A recent statutory change harmonized Wisconsin's state mobile air conditioner law  
4 with federal law, and Wisconsin's unique training course content is no longer applicable.

5 (3) The registration year begins on March 1 of each year. By that date, all mobile air  
6 conditioning businesses and technicians must be registered with the department or pay a  
7 surcharge fee.

8 (4) DATCP has determined that it has sufficient alternative revenue sources to fund the  
9 mobile air conditioning program and is undergoing rule-making to permanently eliminate the  
10 \$120 registration fee. However, the rule-making will not be effective for the upcoming  
11 registration year that begins March 1, 2014. The department has also determined that its  
12 technician training requirements can be modified due to recent changes in state statute that  
13 harmonize Wisconsin law with federal law. Technicians who complete the federally approved  
14 training course will now meet Wisconsin's training requirement.

15 (5) This temporary emergency rule is necessary to protect the welfare of the small  
16 businesses that would otherwise pay the registration fee. In addition, the emergency rule is  
17 needed to protect the welfare of small businesses and their employees by eliminating an  
18 unnecessary training requirement.

#### 19 **EMERGENCY RULE**

20 **SECTION 1.** ATCP 136.02 (4) (d) is repealed.

21 **SECTION 2.** ATCP 136.02 (4) (g) (Note) is amended to read:

22 **Note:** You may obtain an application form by writing to OZONE, ~~Consumer Protection~~

23 ~~Bureau,~~ Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.



1           **SECTION 3.** ATCP 136.02 (5) is amended to read:

2           ATCP 136.02 (5) SURCHARGE FOR OPERATING WITHOUT A REGISTRATION CERTIFICATE.

3           An applicant for a business registration certificate shall pay a ~~registration~~ surchage fee  
4           ~~surchage~~ if the department determines that, within one year before submitting the application,  
5           the applicant operated in violation of sub. (1). The applicant shall pay a surcharge of \$160 for  
6           each location at which the applicant operated in violation of sub. (1), regardless of whether the  
7           applicant still operates at that location.

8           **SECTION 4.** ATCP 136.02 (7) is amended to read:

9           ATCP 136.02 (7) RENEWING A REGISTRATION CERTIFICATE. A person holding a business  
10          registration certificate may annually renew that certificate by submitting a renewal application on  
11          a form provided by the department. The renewal application shall include all of the information  
12          required under sub. (4), ~~and shall include a renewal fee of \$120 for each business location.~~

13          **SECTION 5.** ATCP 136.02 (8) (a) is amended to read:

14          ATCP 136.02 (8) (a) Failing to pay a ~~registration~~ surchage fee, or paying with a  
15          worthless check.

16          **SECTION 6.** ATCP 136.08 (1) TRAINING REQUIRED is amended to read:

17          ATCP 136.08 (1) TRAINING REQUIRED. A business operator may not register a technician  
18          under s. ATCP 136.04 unless the technician has successfully completed a department approved  
19          training program under sub. (2) or a training program approved by the federal environmental  
20          protection agency under 40 CFR 82.40 or 40 CFR 82.161. ~~This training requirement does not~~  
21          ~~apply if the technician meets the following applicable requirements:~~

22          ~~(a) The technician has done all of the following if the technician will be servicing mobile~~  
23          ~~air conditioners.~~

1           ~~1.— Serviced mobile air conditioners in another state within the previous 5 years.~~

2           ~~2.— Successfully completed a training course approved by the United States~~  
3 ~~environmental protection agency under 40 CFR 82.40.~~

4           ~~3.— Successfully completed an open book examination administered by the department.~~

5           ~~(b). The technician has done all of the following if the technician will be servicing trailer~~  
6 ~~refrigeration equipment:~~

7           ~~1.— Serviced trailer refrigeration equipment in another state within the previous 5 years.~~

8           ~~2.— Successfully completed a training course approved by the United States~~  
9 ~~environmental protection agency under 40 CFR 82.161.~~

10          ~~3.— Successfully completed an open book examination administered by the department.~~

11          SECTION 7. ATCP 136.08 (7) (Note) is amended to read:

12          Note: You may obtain a list of approved training programs by writing to OZONE,  
13 Consumer Protection Bureau, Weights and Measures Bureau, P.O. Box 8911, Madison, WI  
14 53708-8911.

15          SECTION 8. ATCP 136.10 (2) (c) is repealed.

16          SECTION 9. ATCP 136.10 (3) (a) 2. is repealed.

17          SECTION 10. ATCP 136.10 (3) (b) 4. is repealed.

18          SECTION 11. ATCP 136.12 (1) (b) (Note) is amended to read:

19          Note: You may obtain a list of approved recovery and recycling equipment by writing to  
20 OZONE, Consumer Protection Bureau Weights and Measures Bureau, P.O. Box 8911, Madison,  
21 WI 53708-8911.

22          SECTION 12. ATCP 136.12 (2) (Note) is amended to read:

1           **Note:** You may obtain a list of approved independent testing organizations by writing to  
2 OZONE, ~~Consumer Protection Bureau~~ Weights and Measures Bureau, P.O. Box 8911, Madison,  
3 WI 53708-8911.

4           **SECTION 12. EFFECTIVE DATE:** This emergency rule takes effect on the \_\_\_\_\_ day of  
5 \_\_\_\_\_, and remains in effect for 150 days. The department may seek to extend this  
6 emergency rule as provided in s. 227.24, Stats.

7  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Ben Brancel, Secretary

## ADMINISTRATIVE RULES – FISCAL ESTIMATE

### 1. Fiscal Estimate Version

☒ Original ☐ Updated ☐ Corrected

### 2. Administrative Rule Chapter Title and Number

ATCP 136 Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

### 3. Subject

Registration fees and training requirements for operators of mobile air conditioning businesses

### 4. State Fiscal Effect:

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

### 5. Fund Sources Affected:

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

### 6. Affected Ch. 20, Stats. Appropriations:

20.115(1)(hm)

### 7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

### 8. Local Government Units Affected:

☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ School Districts ☐ WTCS Districts ☐ Others:

### 9. Private Sector Fiscal Effect (small businesses only):

<input type="checkbox"/> No Fiscal Effect	<input checked="" type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input checked="" type="checkbox"/> Decrease Costs

### 10. Types of Small Businesses Affected:

Mobile Air Conditioning businesses and training providers

### 11. Fiscal Analysis Summary

DATCP estimates that total revenue reduction for the upcoming registration year (March 1, 2014 to February 28, 2015) would be about \$420,000. Under this rule, DATCP estimates that the total program revenue would be less than \$7000, from surcharges on late registrations only. The fiscal impact of the training changes is indeterminate.

### 12. Long-Range Fiscal Implications

This is a temporary emergency rule only, and will not have any direct long-term fiscal impact. However, the department is also promulgating a permanent rule to make the fee reduction and training changes permanent.

13. Name - Prepared by Jennifer Heaton-Amrhein	Telephone Number 608/224-5164	Date 11/21/13
14. Name - Analyst Reviewer Jason Gherke	Telephone Number 608/224-4748	Date 2013
Signature -Secretary or Designee	Telephone Number	Date

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